

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Stephen C. Francis

Case Number: 03-02789

Name of the Respondent
Salomon Smith Barney, Inc.
doing business as Robinson
Humphrey Company, LLC

Hearing Site: Atlanta, Georgia

Nature of the Dispute: Associated Person vs. Member.

REPRESENTATION OF PARTIES

For Stephen C. Francis, hereinafter referred to as "Claimant": Richard E. Miley, Esq., North Augusta, South Carolina.

For Salomon Smith Barney, Inc. doing business as Robinson Humphrey Company, LLC, hereinafter referred to as "Respondent": Daniel D. Zegura, Esq. and Brett A. Rogers, Esq., Rogers & Hardin, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: April 8, 2003.

Claimant's Statement of Reply filed on or about: July 22, 2003.

Claimant signed the Uniform Submission Agreement: April 24, 2003.

Statement of Answer filed by Respondent on or about: July 1, 2003.

Respondent signed the Uniform Submission Agreement: June 26, 2003.

Respondent's Motion for Entry of Award on the Pleadings filed on or about: March 19, 2004.

Claimant's Reply Brief filed on or about: April 15, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; slander; and, retaliation. Claimant contended that he was forced out of his 14-year employment as a registered representative with Respondent on the pretext of customer complaints. He alleged the actual reason for that action was his refusal to submit to the sexual advances of female superiors in the office. It is uncontested that Claimant had had a prior sexual relationship with one of those superiors. Claimant argued there was no other basis for his termination, in that the so-called customer complaints were in fact either baseless or not complaints at all.

After his departure on August 16, 1999, Claimant filed an EEOC sexual harassment charge, and over the next year or so, Claimant's then-attorney and attorneys for Respondent engaged in settlement negotiations. In or about August 2000, the parties settled for a not-insignificant payment to Claimant. A settlement agreement ("Dismissal") of the EEOC charges was prepared

by an EEOC representative and signed by an attorney for Respondent in New York as well as by Claimant. In addition to that document, a separate contemporaneous release and settlement ("Release") was prepared by Respondent's legal department and similarly executed by Respondent's attorney and by Claimant. Claimant's then-attorney reviewed both documents prior to Claimant's execution of them. The EEOC Dismissal states in part that Respondent agrees to inform prospective employers that Claimant "voluntarily resigned". There is further language that the parties will cooperate in the ongoing NASD investigation regarding the "U5 Code issue". The Release does not contain similar language.

After his departure from Respondent, Claimant operated his own firm, taking about \$7 million dollars of accounts from Respondent. In or about summer, 2002, Claimant had an opportunity to go to work as a registered representative for another major brokerage firm, but that did not happen because Claimant's U5 read that he had been discharged due to customer complaint. Claimant contends that the EEOC Dismissal contractually requires Respondent to report that he had "voluntarily resigned" and that the U5 should so reflect. Respondent contended that Claimant was in fact discharged under the circumstances, due to customer complaint, and that it is not bound by any language in either the EEOC dismissal or the Release to report otherwise on Claimant's U5.

Respondent contended that it had received three customer complaints of unauthorized trading by Claimant prior to his departure. Upon investigation by the branch manager, the first of these appeared grounded, especially since telephone records did not record calls from Claimant to the customer around the dates of the alleged unauthorized trades. Since it appeared the customer might have consulted counsel, and since a relatively small amount was involved, that claim was settled and charged against Claimant. A second complaint, received orally not long after the first, appeared vague and unsubstantiated upon investigation, and the branch manager recommended Respondent take no action on it. The third complaint, received in May, 1999, was from a customer owning one of Claimant's largest accounts. The customer had known Claimant most of his life, had been his Sunday School teacher at times when he was young, and clearly reposed great confidence in Claimant's handling of her account. She was a Magistrate Court Judge in her early 60s, intending to retire in a few years and with a net worth somewhere in the million dollar range. Prior to receipt of the complaint, the high margin in the account had caused the branch manager to contact the customer, who signed and returned a "negative consent" letter saying that the customer was aware of the trading and activity in her account and agreed that her objective was aggressive. The complaint was received less than two weeks after return of the letter. When confronted with the written complaint, Claimant denied that it was a complaint at all; suggested that it was instigated by the customer's son; and, denied any unauthorized trading or improper handling of the account. Claimant contended that the customer desired to increase her net worth and was willing to accept aggressive actions in the account in order to do so. The evidence shows that the account had appreciated overall during Claimant's handling of it. The account had some \$695,000.00 in margin debt in spring, 1999, although that was reduced by the time the complaint was received. The account had generated some \$57,000.00 in commissions and \$25,000.00 in margin interest during 1998. It also traded in options and other aggressive positions.

Respondent determined, based upon the above complaints, that Claimant should depart and informed him that he would be permitted to resign and that Respondent would not contest his taking of current customers and would not solicit their retention for a period of time after his departure. Claimant contended he could not find another position due to U4s filed by Respondent. After some six weeks, Respondent gave Claimant a deadline to resign or be discharged, and at that deadline Claimant appeared with a letter from an attorney alleging sexual harassment, presented the letter to the branch manager and Respondent's officials, and departed without comment. It is uncontested that Claimant did not submit a written resignation.

RELIEF REQUESTED

Claimant contends that Respondent's false report of a discharge due to customer complaint, after it had settled his harassment claim by agreeing to report a voluntary resignation, has prevented his re-employment in the industry. He presented evidence that the difference between what he could be projected to earn as a registered representative for a major firm versus his probable self-employment earnings, through retirement in 2021, was some \$1,868,766.00. He seeks that amount in compensatory damages. Alternatively, he seeks revision of his U5 to report a voluntary resignation, which report would allow him to be employed in the industry and would truncate the loss of earnings for which he seeks compensation. He also seeks punitive damages and attorney's fees and expenses. In addition, at the hearing, Claimant amended his claim to add a request for the CAP payments due to him from Respondent.

Respondent requested that Claimant's claims be denied in their entirety. Further, Respondent requested that it be awarded its costs of defense, including reasonable attorneys' fees, and such other and further relief as is just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about April 22, 2004, the arbitration panel issued an order which denied Respondent's Motion for Entry of Award on the Pleadings.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

On May 28, 2004, several days prior to the first scheduled hearing session, Claimant filed a motion objecting to the replacement of one of the three original arbitrators, and for postponement of the proceedings. Claimant contended that he had been notified by NASD on May 25 that one of the original arbitrators had withdrawn and that Dave Wolf, Jr. had been designated as a replacement. Claimant sought explanation from NASD, which he said was not forthcoming, and objected that arbitrator Wolf was not on the original arbitrator list presented to the parties for striking and ranking. Claimant contended that replacement of the original arbitrator was improper and denied him due process. Respondent opposed the motion. Prior to the substantive hearing, the arbitrators heard arguments of counsel on the motion, and the two long-standing arbitrators, in executive session, deliberated and ruled that the withdrawal and replacement procedure had not been shown to have been improper or not in accordance with NASD rules, and denied the motion for postponement. Claimant then accepted the composition of the panel including Mr.

Wolf, subject to and without waiving his objections stated in the record. The hearing proceeded before three arbitrators.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

Respondent had grounds to terminate Claimant; Claimant has not shown a pretextual basis for his termination; and Claimant's departure from Respondent was involuntary, under a notice to leave.

However, under all the facts and circumstances, and not withstanding any prior agreements between the parties, the Panel has determined that the reason for termination on Claimant's U5 filed with CRD by Respondent shall be expunged and replaced with "permitted to resign". The accompanying termination explanation shall remain "customer complaint". The Panel finds no complaint against Claimant involved a sum of \$5,000.00 or more. Further, Respondent shall investigate the status of CAP payments concededly due to Claimant, and if Claimant has not received the amounts due, Respondent shall insure that he does. The Panel finds that the responsibility for the current wording of the U5 and for any resulting injury to Claimant is borne by the parties equally, and consequently makes no monetary or compensatory award to Claimant. No punitive damages or attorney's fees and expenses are awarded. The parties shall bear their own costs. Any and all claims for relief not specifically addressed herein are denied. All forum and filing fees shall be allocated 25% to Claimant and 75% to Respondent. As such, Respondent is liable and shall pay to Claimant the sum of \$375.00 representing a partial reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$500.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$750.00
Hearing process fee	= \$5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments for which fees were assessed were granted in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00	= \$2,400.00
Pre-hearing conferences: December 10, 2003 1 session	
April 22, 2004 1 session	
Nine (9) Hearing sessions @ \$1,200.00	= \$10,800.00
Hearing Dates: June 1, 2004 2 sessions	
June 2, 2004 2 sessions	
June 3, 2004 3 sessions	
June 4, 2004 2 sessions	
Total Forum Fees	= \$13,200.00

The Panel has assessed \$3,300.00 of the forum fees to Claimant.

The Panel has assessed \$9,900.00 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

FEE SUMMARY

Claimant is solely liable for:

Initial Filing Fee	= \$500.00
Forum Fees	= \$3,300.00

Total Fees	= \$3,800.00
Less payments	= \$1,700.00

Balance Due NASD Dispute Resolution	= \$2,100.00
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Respondent is solely liable for:

Member Fees	= \$8,550.00
Forum Fees	= \$9,900.00

Total Fees	= \$18,450.00
Less payments	= \$13,550.00

Balance Due NASD Dispute Resolution	= \$4,900.00
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All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Robert H. Putnam, Jr., Esq.	-	Public Arbitrator, Presiding Chair
Dave Wolf, Jr.	-	Public Arbitrator
Dean T. Parisian	-	Public Arbitrator

Concurring Arbitrators' Signatures

_____/S/_____
Robert H. Putnam, Jr., Esq.
Public Arbitrator, Presiding Chair

Signature Date

_____/S/_____
Dave Wolf, Jr.
Public Arbitrator

Signature Date

_____/S/_____
Dean T. Parisian
Public Arbitrator

Signature Date

June 24, 2004
Date of Service (For NASD Dispute Resolution office use only)

Initial Filing Fee	= \$500.00
Forum Fees	= \$3,300.00
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Dave Wolf, Jr.	-	Public Arbitrator
Dean T. Parisian	-	Public Arbitrator

Concurring Arbitrators' Signatures


Robert H. Putnam, Jr., Esq.
Public Arbitrator, Presiding Chair

06-18-04
Signature Date

Dave Wolf, Jr.
Public Arbitrator

Signature Date

Dean T. Parisian
Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

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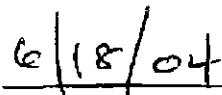
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Robert H. Putnam, Jr., Esq.
Public Arbitrator, Presiding Chair

Signature Date


Dave Wolf, Jr.
Public Arbitrator


Signature Date

Dean T. Parisian
Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

Jun 18, 2004

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Dave Wolf, Jr.	-	Public Arbitrator
Dean T. Parisian	-	Public Arbitrator

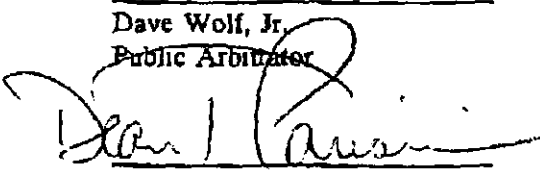
Concurring Arbitrators' Signatures

Robert H. Putnam, Jr., Esq.
Public Arbitrator, Presiding Chair

Signature Date

Dave Wolf, Jr.
Public Arbitrator

Signature Date


Dean T. Parisian
Public Arbitrator

6-20-2004
Signature Date

Date of Service (For NASD Dispute Resolution office use only)